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CLEARINGHOUSE RULE 00-026

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Section 281.33 (5), Stats., requires the department, municipalities and all state agencies to cooperate to accomplish the objective of s. 281.33, Stats. The department, among other things, is required to consult with the governmental bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and is required to prepare model ordinances. While consultation with the major organizations representing municipal governments is not expressly required in connection with the model ordinances in this rule, it is suggested that the department consult with those organizations before the rule is promulgated to obtain the benefit of their review and comment, if the department has not already done so.

b. Although the page numbers will be deleted when the rule is promulgated, it is suggested that “of 49” replace “of 2” in subsequent drafts.

c. Note that, because of the format of the rule, the review of and comments on the rule depart from the usual standard and method of review and comment, particularly in connection with the form and style of the rule. Further, to the extent that the model ordinances do not meet local needs or circumstances, local governments are, of course, free to revise the model ordinances or decline to use them at all.

d. Section NR 152.01 (3) should be placed in the note to the section.

e. In general, it appears that the model ordinance for storm water management zoning is more thoughtfully drafted, better organized and more complete than the model ordinance for construction site erosion control zoning. (Although the model storm water management ordinance may itself be subject to criticism for, among other things, being excessively detailed.) It is suggested that the department review the model ordinances to make them more compatible concerning drafting, organization, style and completeness.

f. In general, the model ordinances should be reviewed for consistency in format, consistency in use of subunit titles and consistency and appropriateness of punctuation.

g. The following general comments apply to the model construction site erosion control zoning ordinance:

- (1) It is suggested that a note follow s.03 to explain the significance of the alternatives presented in that section.
- (2) It is suggested that s.04 (5) and (6) be reviewed and compared for compatibility.
- (3) In s.07 (1) (intro.), it is suggested that the clause read as follows: "This section applies to the following land disturbing construction activity, excluding that otherwise regulated under ss. Comm 21.125 and Comm 50.115, Wis. Adm. Code:".
- (4) It is suggested that pars. (a) to (f) of s.07 (1) begin with "Activity" rather than "Those."
- (5) s.07 (2) does not indicate who is required to design, install, apply and maintain best management practices. It is suggested that pars. (a) and (b) of s.07 (2) be combined. It appears that the second sentence of par. (f) of s.07 (2) should read: "By the end of the next working day following the occurrence, off-site sediment deposition occurring as a result of a storm event shall be cleaned up." It appears that "the requirements of" should follow "achieve" in s.07 (2) (h).
- (6) Consideration should be given to relocating that portion of s.08 that relates to the permit requirement near the beginning of the model ordinance. It is suggested that the provisions of s.08 that relate to the erosion and sediment control plan and to permit issuance be given separate section status.
- (7) It appears that the title to s.08 (1) is intended to contain substance. In general, the title of rules and statutes do not represent substance. The substance of the title should be located in the text. See also, in this regard, the title to s.08 (2).
- (8) s.08 (1) (b) 7. is unclear.

- (9) s.08 (1) (c), first sentence, should read: “If permanent infiltration systems are used, the erosion and sediment control plan shall require appropriate on-site testing to be conducted to determine if seasonal high water is within 5 feet of the bottom of the proposed practice.” In the next sentence, “to be” can be deleted.
- (10) In s.08 (1) (e), second sentence, it appears that “existing” should be deleted and “under par. (d)” added following “map.” In s.08 (1) (f), it appears that the sentence should begin with: “The erosion and sediment control plan shall require that velocity dissipation devices be placed”
- (11) In s.08 (3), to what does erosion and control plan “statement” refer? In par. (c), “of” should be deleted.
- (12) In s.08 (4) (L), “enforcement actions and penalties” should replace “enforceable actions.”
- (13) In s.10 (2), a bracket should follow the first use of “authority.”
- (14) In s.10 (3), it appears that “posed” should be “posted.” It also appears that mention should be made in that subsection of the county corporation counsel and town attorney.
- (15) Attention should be paid to consistent and appropriate use of “permittee,” “landowner,” and “land user” in s.10.

h. The following comments relate to the model storm water management zoning ordinance:

- (1) In s.03 (2), on page 21, line 19, “a” should be inserted before “more.”
- (2) The rule should be reviewed to determine whether the numerous definitions in s.04 are actually utilized in the rule.
- (3) In s.05 (2), a note should be added to explain the significance of the alternatives offered under that section.
- (4) In the first sentence of s.07 (1) (intro.), should “best” precede “management”? In the last sentence, to what do “all of the following” apply?
- (5) In s.07, the bold type should be deleted.
- (6) In s.07 (1) (c) 3., the introductory clause should read: “This paragraph does not apply to the following areas and conditions:”.
- (7) It is suggested that pars. (a) and (b) of s.07 (2) be combined.

- (8) In s.07 (2) (c), last sentence (line 10), it appears that there is a word missing.
- (9) In s.08 (2) (a), the language following “by” and ending before the colon may be deleted.
- (10) Compare the last sentence of s.10 (1) with “maintenance agreement” in s.04 (18).
- (11) In s.10 (2) (f), it appears that “shall” should be deleted in both instances and replaced by “to.”
- (12) s.10 (2) (g) is awkwardly drafted.